IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.MC.No. 2531 of 2007()

AGAINST THE ORDER DATED 11/04/2007 IN CRMP 1023 2007 IN CRA.278/2007 of SESSIONS COURT, TRIVANDRUM

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PETITIONER: APPELLANT/ACCUSED

P.PALAYYAN, S/O.RAJAYYAN,
MANAPAZHANJI VEEDU, NEDIYANKODE,
PARSUVAIKKAL, NEYYATTINKARA.

BY ADV. SRI.M.R.SUDHEENDRAN
SRI.SURAJ.S

RESPONDENTS: RESPONDENTS/COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. SARACHANDRAN NAIR, S/O.PRABHAKARAN NAIR,
SABARI, PARASUVAIKKAL P.O., PARASSALA,
NEYYATTINKARA.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/08/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2531 Of 2007

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Dated this the 8th day of August, 2007

ORDER

Petitioner has been found guilty and convicted sentence in a prosecution under Sec.138 of the Negotiable Instrument Act. He faces the sentence of simple imprisonment for a period of nine months. No direction for payment of fine or compensation has been issued.

2. The petitioner preferred appeal. The learned Sessions Judge directed suspension of sentence subject to the condition inter alia that 1/10th of the amount namely Rs.60,000/- must be paid within a period of two months.

3. The petitioner claims to be aggrieved by the said direction. What is the grievance? Admittedly a claim based on the cheque before the Civil Court has resulted in a decree and the said decree is being put into execution now. No payment has been made even in obedience of the decree of Civil Court admittedly

4. I do not, in these circumstances, find no error or impropriety in the condition imposed by the learned Sessions Judge. The learned counsel for the petitioner submits that in the execution proceedings he has raised the plea of no means. If in the meantime , the sentence were to be executed that would result in the anomalous situation of

the sentence being executed even before the appeal is considered on merits.

5. In response to a specific query of this Court , the learned counsel for the petitioner submits that the petitioner shall deposit an amount of RS.10,000/- immediately and get ready for hearing in the appeal. In the facts and circumstances of this case, I am satisfied that appropriate directions can be issued to the learned Sessions Judge.

6. In the result this petition is allowed in part. The petitioner shall deposit an amount of Rs.10,000/- on or before 24.8.07. He shall have one months further time from that date to pay the entire balance of Rs.50,000/-. In case the petitioner is not able to make such payment, the petitioner shall report that fact to the learned Sessions Judge on or before 24.8.07. In that event the learned Sessions Judge shall proceed to dispose of the appeal within one month from 24.8.07.

(R.BASANT, JUDGE)

sj